IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 700

BORG-WARNER CORPORATION and
DAVID E. GAMBLE,
Petitioners,

vs.

GEORGE I. GOODWIN and JOHN F. DAUKUS,
Respondents.

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONERS' MOTION FOR LEAVE TO FILE (SECOND) PETITION FOR REHEARING.

MAX W. ZABEL,
EDWARD C. GRITZBAUGH,
BENTON BAKER,
Counsel for Petitioners.

Scheffer Printing Company, Del. 7171

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Respondents, instead of directing their brief to the merits of petitioners' motion, content themselves with charging that petitioners in bringing the motion merely resort to delaying tactics and seek to excuse their delay by misrepresentation. Specifically, respondents distort the sentence beginning in line 4 of page 3 of petitioners' motion into a representation that petitioners had not previously raised before this Court the questions which petitioners now seek to have this Court consider.

Petitioners did not intend to make any such representation, and it is not believed that their language is fairly susceptible of such interpretation. Their reference to the

jurisdictional and other questions presented by those motions as "not previously raised" was made in relation to proceedings below affecting the *judgment* of which review is sought. Moreover, the companion petition for writ of certiorari does present procedural questions which were not previously presented to this Court.

Petitioners are quite aware, as the Court must be, of the matters set forth in their first petition for rehearing. Such matters had not previously been presented in the lower courts. The motions under consideration were made with a view to presenting those questions in the Sixth Circuit Court of Appeals so that they might properly be considered by this Court. The denial of the motions gives rise to further procedural questions. It is believed that the judgment of July 1, 1946 is affected, by the questions presented in the motions and should be reviewed.

Whatever delay there has been in presenting the motion for leave is due largely to the fact that, at respondents' request, the motions in the Court of Appeals were set for hearing two months after they were filed, and to inability sooner to procure the printed transcript of record.

It is submitted that the motion is meritorious and should be granted.

MAX W. ZABEL,
EDWARD C. GRITZBAUGH,
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Counsel for Petitioners.